

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

**FILED**

SEP 12 2019

Clerk, U S District Court  
District Of Montana  
Billings

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

EDWIN ALBERTO JOHNSON,

Defendant/Movant.

Cause No. CR 11-140-BLG-SPW  
CV 16-077-BLG-SPW

ORDER

This matter comes before the Court on Defendant/Movant Johnson's motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. The defendant is a federal prisoner represented by counsel.

Defendant/Movant Johnson ("Defendant") seeks relief under *Johnson v. United States*, \_\_ U.S. \_\_, 135 S. Ct. 2551 (2015), which was made retroactive to final judgments by *Welch v. United States*, \_\_ U.S. \_\_, 136 S. Ct. 1257 (2016), *Sessions v. Dimaya*, 138 S. Ct. 1204, 1201 (2018), and under the Supreme Court's extension of those decisions to the virtually identical language of 18 U.S.C. § 924(c)(3)(B) in *United States v. Davis*, \_\_ U.S. \_\_, 139 S. Ct. 2319, 2323–24 (2019). The United States concedes Defendant's motion. *See* Resp. to Order (Doc. 214) at 2.

Accordingly, IT IS ORDERED:

1. The Order of May 7, 2018 (Doc. 171) is REINSTATED. Based on that Order and the Supreme Court's decision in *Davis*, Johnson's motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255 (Doc. 152) is GRANTED.

2. Johnson's conviction on Count 2 is VACATED.

3. Judgment in the civil case is VACATED. When an amended judgment is entered in the criminal case, the clerk shall close the civil file by entering judgment, by separate document, in favor of Johnson and against the United States.

DATED this 12<sup>th</sup> day of September, 2019.



Susan P. Watters

United States District Court

cc: USPO